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09/920,080	07/31/2001	Robert E. Gillis	016494-001200US	4438

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/920,080

Applicant(s)

GILLIS, ROBERT E.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) 6,13,14,19,25,27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 7-12, 15-18, 20-24, 29, and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 17 March 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Request for Continued Examination*

The request filed on August 25, 2003 (Paper No. 12) for a Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 09/920,080 is acceptable and an RCE has been established. An action on the RCE follows.

### *Status of Claims*

Claims 6, 13, 14, 19, 27, and 28 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Claims 2 and 26 have been canceled by the amendment filed (with the RCE) on August 25, 2003 (Paper No. 13).

With respect to claim **25**, the amendment made to the claim is such that the claim no longer reads on the elected species and sub-species, i.e., Figures 1, 2, 4a, and 3a, respectively. It is noted that the claim is now directed to the species embodied by Figure 5. Accordingly, claim **25** is withdrawn from consideration as being directed to a non-elected species.

### *Drawings*

The proposed replacement drawing sheet was received (with the amendment) on August 25, 2003 (Paper No. 13). This proposed replacement drawing sheet is not approved since numeral 22 has not been "replaced" with numeral 25 in Figure 3b.

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The drawings filed on July 31, 2001 are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the membrane connected "over" the pole and spar(s), as in claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It is noted that only original claim 12 has support for this feature, i.e., the specification does not state nor do the original drawings show how the membrane is connected "over" the pole and spar(s).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the *first* paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not state nor do the drawings show that one end of the spar "terminates in" the surface (claim 8) or common plane (claim 21). In fact, the specification states that one or both ends of the spar "do not terminate" in the common plane but rather "float" (see paragraphs 07 and 19).

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The following is a quotation of the *second* paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3-5, 7-12, 15, 29, 30, 16-18, and 20-24 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 (see line 9), claim 16 (see line 10), claim 29 (see line 3), and claim 30 (see line 3) recite the limitation "said flexible frame". There is insufficient antecedent basis for this limitation in the claims.

The limitation "a volume dependent on said spar" in claim 1 (see the last line) appears to be vague, thereby rendering the claim indefinite since it is unclear how the space is dependent on the spar, i.e., does the "shape and size" of the spar in combination with the pole define the space and hence the volume?

The language of the phrase "in said surface" in claim 8 (note also Section 112, 1<sup>st</sup> paragraph above) and claim 9 appears awkward thereby rendering the claims indefinite since it is unclear how the end terminates "in" the surface, especially when the surface is not being positively claimed. This rejection is also applicable to claim 21 (note also Section 112, 1<sup>st</sup> paragraph above) and claim 22 which recite "in said common plane".

Claim 30 is rendered indefinite since the recitation "membrane engages said spar" appears to be vague.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 7, 8, 10-12, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Spray '094.

Spray '094 discloses a flexible shelter structure comprising an elongated flexible (see column 6, line 42) pole (A) having a first end and a second end terminating in substantially common plane (through 10 in Figure 1); flexible spars (D and B - see Figures 1 and 3) each having first and second ends whereby the spars (D and B) are connected directly to the pole (A) at points intermediate the ends of the pole (A) whereby the spars (D and B) cross (see Figure 3) the pole (A) at an angle and the spars having a bent shape; at least one end of the spar (D) not terminating in the common plane (at 19 in Figure 3) and one end of the spar (D) terminating in the common plane (near 10 in Figure 3); a membrane (15) connected to the pole (A) and spars (D and B) to thereby form a sheltered space extending substantially to the common plane; and a tensioning means (10) is in communication with the pole (A) to place the pole under tension to cause the pole to flex in a substantially arcuate shape.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7, 9-11, 15, 30, 16-18, 20, and 22-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Gerig '649.

Gerig '649 discloses a flexible shelter structure comprising an elongated flexible (see column 4, line 4267-column 5, line 3) pole (2) having a first end and a second end terminating in substantially common plane (through 7); spars (10) each having first and second ends whereby the spars (10) are connected directly to the pole (2) at points intermediate the ends of the pole (2) whereby the spars (10) cross (see Figure 4) the pole (2) at an angle substantially transverse to the pole (2); the first and second ends of the spars not terminating in the common plane; a membrane (5) connected to the pole (2) and spars (10) to thereby form a sheltered space extending *substantially* to the common plane; the pole (2) can comprise a plurality of interconnected, i.e., the segments are interconnected by element 4, pole segments (see Figure 3) and a tensioning means (4) is in *communication* (via 5) with the pole (2) to place the pole under tension to cause the pole to flex in a substantially arcuate shape.

The claims differ from Gerig '649 in requiring "flexible" spars.

Although Gerig '649 does not explicitly state that the spars (10) are flexible, it can be seen from Figure 4 that the spars appear to be flexible since as the first and third poles (left and right sides of Figure 4) are moved outwardly away from the middle pole the tops of the poles would form an arc. *Thus*, when the top spar is connected to the tops of the poles the spar would become bent as shown in Figure 4. It is noted that although the ends of the spar are "rigidly" connected to the first and third poles the spar itself is considered to be "flexible".

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*Accordingly*, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the spars would be flexible thereby allowing for ease in assembly, economy and manufacture.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerig '649 as applied to claims 1, 3-5, 7, 9-11, 15, 30, 16-18, 20, and 22-24 above, and further in view of Warner '638.

The claim differs from Gerig '649 in requiring a guy wire engaging a spar and terminating in the common plane.

Warner '38 teaches a structure comprising a guy wire (7) engaging a spar (4) and terminating at the ground.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the structure of Gerig '649 with a guy wire for assisting in maintaining the structure in an upright position.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5, 7-12, 15, 29, 30, 16-18, 20-24, 25, and 26 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment deleting the recitations "flexibly" and "being free" from claims 1 and 16. It is noted that a "flexible spar" is not considered to be equivalent to a "spar flexibly connected" and that ends "not terminating in the common plane" is not the same as ends "being free". The deletions of "flexibly" and "being free" and the additions



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of "spar flexibly connected" and "not terminating in the common plane" change the scope of the claim.

***Comments***


It is noted that in view of the Section 112, 1<sup>st</sup> paragraph rejection of claim 21 (advanced above) claim 21 has not been rejected under the prior art at this time.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

  
Jennifer E. Novosad  
Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
September 24, 2003